

100-03-186

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BEFORE THE ADMINISTRATOR  
Commission on Civil Rights  
Complaint against  
United States Department of Energy (DOE)  
Los Alamos National Laboratory (LANL) -University of California (UC)  
National Nuclear Security Administration (NNSA)

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**Request for Investigative Hearing**

La Cienega Valley Citizens for Environmental Safeguards (CES)

Files this COMPLAINT UNDER TITLE VI OF THE CIVIL RIGHTS ACT of 1964:  
Administrative Procedures Act (APA); (5 USC Chapters 5 through 8; Atomic Energy Act  
(AEA); Toxic Substance Control Act (TSCA); National Emissions Standards for  
Hazardous Air Pollutants (NESHAP); Nuclear Waste Policy Act of 1982(WPA); Low-  
level Radio-active Waste Policy Amendments Act of 1985; Resource Conservation and  
Recovery Act (RCRA) -42 U.S.C.A §§ 6942 to 6949 and the Clean Water Act 33  
U.S.C.A. §§ 1251 to 1387, National Environmental Policy Act (NEPA)  
and National Historic Preservation Act (NHPA).

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**I. INTRODUCTION**

This is a citizens' complaint under Title VI of the Civil Rights Act of 1964, as amended, \*\*42 U.S.C. §§ 2000d et seq., by the La Cienega Valley Citizens for Environmental Safeguards (Hereafter known as "CES") and other individuals and organizations, residents of the area/region and are working for environmental justice throughout New Mexico. Complainant, Elaine Cimino, pro se, a non-lawyer, and as an officer of the Citizens for Environmental Safeguards respectfully requests the commission's indulgence of any technical shortcomings.

The CES represents as a group and individuals (collectively referred to as "the Complainants") hereby request an investigation and hearing by the Commission on Civil Rights to be held in the Santa Fe, New Mexico.

**This complaint is filed against the Department of Energy (hereafter DOE) is a recipient of U.S. federal appropriations /funding assistance within the meaning of \*\*40 C.F.R. §7.25 (b) and/or is recipient of the preceding federal agencies and department federal funding include United States Department of Energy (DOE) Los Alamos National Laboratory (hereafter LANL) -University of California (hereafter UC) Regents of University of California, operating contractor for the facility and the National Nuclear**

Security Administration (NNSA); and under the meaning of 40 C.F.R. § 7.25 and Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000d to 2000d-7.

The hearing is to investigate the allegations that the DOE, UC LANL and NNSA violated the Civil Rights Act-Title VI and requirements of U.S. government administrative policy, RCRA, NEPA, NHPA regulations, regarding the operation of the federal facilities expansions at LANL. The above parties used delaying tactics to avoid public participation and public comment on the un-permitted radioactive and hazardous waste facilities under RCRA and “manage” public comment to. The current administration is siting facilities that have a disparate impact on communities of color that potentially expose the community residents to toxic and hazardous substances through the surface/ground water and air emissions. The contractor under the auspices of the United States government use disparate employment practices on people of color at the Laboratory. This includes occupational and environmental exposure to workers and to the community which violates the human and civil rights under the Constitution. (See attachment A; Background). These basic human and civil rights violations have been committed and justified under the veil of “national security”.

LANL’s practices particularly targeted low-income, Pueblo and Latino communities. DOE UC LANL and NNSA are not only active participants in the system of siting and permitting of these facilities, but continue to use a method of administering the permitting authority that results in discriminatory outcomes. They are as follows: (See Attachment E) (The following is just a sampling of what has transpired).

- ◆ Currently, DOE has plans for the expansion of facilities at the Two-mile Complex that will house highly toxic and hazardous substances for research, development and testing. This is being done with an environmental assessment (EA) permitting only 21-day public comment period. The continuous development of nuclear and biological weapons that poses imminent safety and health risks to the general public and communities of color which are first contact communities further supports our complaint of discriminatory pattern and practices by the US governmental agencies upon the people of New Mexico (See Attachment D).
- ◆ Perchlorates or other contaminant pathways from Los Alamos National Laboratory (otherwise known as LANL or the Lab) - Discovered by the New Mexico Environment Department (NMED) Water Quality Task Force and released in a report in Jan 2002. (See Attachment B).
- ◆ In a recent study commissioned by Concerned Citizens for Nuclear Safety (CCNS) titled, “New Mexico’s Right to Know: The Impacts of Los Alamos National Laboratory Operations on Public Health and the Environment” found... “ That the emissions from LANL into the air may be as many as 20 times greater than previously estimated. The

report find increased incidence of breast cancer, melanoma, non-hodgkin's lymphoma, ovary, prostate, testicular and thyroid cancers in Los Alamos County. Furthermore the report finds that the occupation health studies at LANL have been discriminatory and incomplete." (See Attachment F)

These discriminatory practices by LANL violate Title VI of the Civil Rights Act of 1964 and the EPA's implementing regulations as codified by 40 C.F.R. Part 7.

This complaint reveals the pattern, practices and continuous discriminatory behavior that the administration of DOE UC LANL rides roughshod over the people of color in the surrounding communities. The Commission on Civil Rights needs to investigate these charges in a hearing. Under Title VI of the Civil Rights Act of 1964 by DOE - UC LANL patterns and practices of discriminatory behavior are well established in several areas. One, is the differential management of employees of color regarding pay scale, treatment, hostility and retribution. Two, the exposures of employees and handling of health claims and information requests regarding health issues related to the operations of the Lab. Three, is the siting and continued operation and expansion of new facilities, without a permit and adequate, secure waste disposal and cleanup plans. Four, the historic dumping of toxic waste by LANL created a legacy in which contaminants now threaten water supplies.

The federal facility complex has over 2,500 contaminated sites including 25 un-permitted landfills. LANL is responsible for many contaminated off site locations. The continued storage and disposal consists of dumping of waste into unlined trenches. As a result of years of this pattern and practice perchlorate or other contaminants established pathways (including radionuclides) which found their way from facilities boundaries and into the surface/ground-water and drinking water (now in small amounts) in surrounding communities. Depending on the acceleration of the nuclear weapons program, it is estimated that over 2.5 million barrels of waste will be generated in the next 20-30 years, with no accepted plan for the storage and waste disposal. LANL has maintained discriminatory practices in occupational health studies and environmental studies and it has been found that there are workers' disparity issues. (See attachment B,E and H)

The environmental justice issues falls under; NEPA Title 1 Sec. 101 [42 USC § 4331 (a), (b), (c):] Sec 102 [42 § 4332 A, B, C, D, E, F, G H, I] This section of NEPA states:

- (C) Include in every recommendation or report on proposals for legislation and other Federal Actions significantly affecting the quality of the human environment, a detailed statement by the responsible official on –
  - B. the environmental impact of the proposed action,
  - C. Any adverse environmental effect which cannot be avoided should the proposal be implemented,
  - D. Alternatives to the proposed action,

- E. The relationship between the local short-term needs of man's environment and the maintenance and enhancement of the long-term productivity. And
- F. Any irreversible and irretrievable commitment of resources which would be involved in the proposed action...(emphasis added)*

The DOE UC LANL's actions or failures to act have had the effect and the intent of discriminating against the Complainants based on their race or color. The behavior pattern and practices follow a climate of imminent health and safety threats to the region. LANL does this by their callous disregard for the human health environment, through the continuation of the production of nuclear and bio-weapons programs, produced in a cloud of secrecy. Under the guise of economic development the DOE UC LANL administration threatens mass lay-offs, while not telling the truth about exposures, toxic releases and/or hazardous emissions. The United States Government -Department of Energy (DOE) funding/assistance falls within the meaning of 40 C.F.R. § 7.25 and Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000d to 2000d-7. The Resource Conservation and Recovery Act -42 U.S.C.A. §§ 6942 to 6949 and the Clean Water Act 33 U.S.C.A. §§ 1251 to 1387. Furthermore, failure to comply with the law is arbitrary and capricious conduct and violates the protection of the complainants and the community at large, under 542 U.S.C. Sec. 1983 and the United States Constitution. Who in the government is supposed to protect and preserve our health and safety, our environment, the quality of life and the public welfare of our future generations, when in fact it's the federal government which has violated the it's own law?

The complainants have significant minority support and there is active opposition to the Labs operations by minority residents of this community who live, work, and recreate in the area impacted by these projects. Therefore, the Complainants have been in opposition to this facility and the new facilities since they were first proposed, have been involved in administrative proceedings on the permit applications, and have suffered the effects of the pattern and practices of the Lab's climate of discrimination and retribution.

**2. THE DOE UC-LANL VIOLATED TITLE VI BY CHOOSING THE SITE OR LOCATION OF DEVELOPMENT AND/OR USING CRITERIA OR METHODS OF ADMINISTERING ITS PROGRAMS WHICH HAVE THE EFFECT OF DISCRIMINATING AGAINST LATINOS AND OTHER PEOPLE OF COLOR ON THE GROUNDS OF RACE OR COLOR**

According to Title VI regulations, 40 C.F.R. § 7.35(c), a recipient of federal funding shall not choose a site or location of a facility that has the purpose or effect of subjecting individuals to discrimination on the grounds of race or color. Moreover, under 40 C.F.R. § 7.35(b), a recipient shall not use criteria or methods of administering its programs, which have the effect of subjecting individuals to discrimination because of their race or color.

The history of the Lab's siting is another devastating story of the displacement of people of color and low income. The short story is that Mr. Oppenheimer liked the place because it was "isolated". Isolated because people of color did not count as people. In fact the Pajarito Mesa has been inhabited for over 5,000 years. Eminent domain was invoked, the people were removed and the federal land transfer took place. Overtime, the Civil Rights Act was implemented, the weather patterns changed and what was thought to be a desert turned out to be a diverse ecological system that supplied the sustenance of water and farming for thousands of years. The region now has over 1,000 contaminated waste sites.

The DOE through approval of the LANL complex of landfills from which the discovered the pathways (the Plume of Doom) are suspected to come from. LANL operations have threatened the regional ground water and surface water supply. Under 40 C.F.R. § 7.35(b) and 40 C.F.R. § 7.35(c), as they are recipients whose actions, criteria or methods have the purpose or effect of subjecting Complainants and the Latino/Pueblo residents to discrimination because of their race or color. This complaint is being filed in accordance with the commenting action on the approval for development of new/expanding facilities. Also, the contaminants from the unpermitted landfills the pathways of discovered from LANL that threaten the Pueblos, and the surrounding communities water supplies and air quality, and its discriminatory practices in occupational health studies and environmental studies and workers disparity issues.

**A. Under NEPA the Parties Must Consider the Entire Universe of Facilities Which Present a Cumulative Burden and/or which reflect a Pattern of Disparate Impact upon the Area**

Under Title VI and the implementing of environmental regulations, programs which receive federal financial assistance may not be administered in a manner that has the effect of subjecting individuals to discrimination based upon race or color. We must determine the effects of DOE UC LANL and NNSA approval of the new and expanding facilities and discovered pathways and emissions discharges from LANL that threatened regional air and water supply. It is the lack of truthful and adequate oversight on the part of DOE, UC-LANL, which has compromised EPA's oversight and impeded the state's environment department (NMED) ability to do its job. As a result there are ten environmental lawsuits currently in motion. Therefore, we must consider the pre-existing burden of the area, and the contribution to or compounding of that burden which the new developments of the increased production of biological and nuclear weapons present in the region and to the people of color.

It is only by considering the actual and complete cumulative burden upon these communities that DOE, UC LANL and NNSA can fulfill its Title VI obligations to prevent the practical effect of subjecting the Pueblo and Latino members of complainants to discrimination based upon race or color.

DOE UC LANL and NNSA have failed to consider any of the complete cumulative burdens.

Any limitations upon of the universe of facilities in the area to be considered is not appropriate in this case, as any such limitations thereby are improperly excludes the permitted or regulated facilities/sites that add to the area's cumulative burden, and fails then to provide a true picture of the actual disparate effect of the DOE UC/LANL operations on surrounding communities. The NNSA, DOE UC LANL's cumulative burdens are as follows:

- ◆ Air emissions\*\*
- ◆ Surface and Ground water discharge of contaminants
- ◆ Cultural resources impacts
- ◆ Un-permitted landfills/ contaminated sites number over 1,000
- ◆ Occupational and environmental health effects
- ◆ Workers' disparity issues

**\*\*Air Pollution (problems under the Clear Air Act 42 U.S.C.A. §§ 7401 to 7641q).**

**\*\*\*Water (problems under the Clean Water Act 33 U.S.C.A §§ 1251 to 1387).**

Similarly, DOE - UC LANL and NNSA must consider the entire universe of facilities that have imposed a pre-existing burden upon the area in order to properly and completely evaluate whether the approval is part of a broader pattern pursuant to which it has become more likely that all facilities, with their accompanying burdens, will be permitted in a community with particular racial characteristics. The NNSA, UC/LANL -DOE have established a broader pattern pursuant to which it has become more likely that a polluting facility will be permitted in or adjacent to the Pueblo and Latino communities than in a non-Latino community under the guise of economic development. To properly analyze this broader pattern of discrimination, DOE UC LANL, NNSA must therefore consider the entire universe of facilities that impact the Latino / Pueblo communities. (See attachment A Background /pattern and practice of 60 years of legacy waste).

**B. Further proliferation of the Manufacturing of Nuclear weapons will add to the Air and Water Quality impacts will add to the Burden of the Disproportionately Impacted Pueblo/Latino Community in the Area**

The current administration's purposeful siting of the nuclear and biological weapons manufacturing facilities from which air emission traverse prevailing winds and discharges contaminate downstream water to the traditional historic communities. All this is without the full environmental impact; historic cultural preservation and environmental economic study needed to measure the impacts of the federal facility to the region, which poses an imminent public health and safety danger.

**C. The Universe of problem Sites Presents a Cumulative Burden Upon the Area and Reflects a Pattern of Disparate Impact Upon Latinos and Native American Indians**

Expansion of LANL facilities and hazardous waste dumping continues despite community opposition. Health and public welfare issues resulting from years of the cumulative environmental and behavioral effects, continued bias toward public participation from community residents, and of “managed public comment.” This includes the stacking of taskforces and committees that lock out community input to see that the LANL mission is accomplished. Community impacts such as working condition, health and safety issues and environmental degradation are seen by the United States administration of LANL as “Collateral Damage”. They see their mission as a national security mission to be achieved by any means possible. Even if it means to violate the human and civil rights of the people of the State of New Mexico and whatever State in which the United States government wishes to site federal Nuclear classified facilities.

- ◆ There are little to no safeguards for first responders, including equipment or training of personnel, for the surrounding communities in case of critical event. In the 60 years of operations the United States government, neither DOE or Congress ever supplied the region with enough funding to implement a solid emergency preparedness plan to protect the safety of the public.
- ◆ The Pueblo communities adjacent to LANL after the Cerro Grande Fire were made to sign disclaimers in order to get their FEMA checks. The disclaimer abrogated their rights to sue on any future health effect resulting from exposures from the fire.

**D. The UC LANL and DOE Effects of Its Permitting Decisions on the Surrounding Population, Including Complainants**

There has not been the appropriate analysis of the fundamental laws governing the process of regulatory agencies through; Administrative Procedure Act (APA) (5 USC Chapters 5 through 8) the Atomic Energy Act (AEA); Toxic Substance Control Act (TSCA); National Emissions Standards for Hazardous Air Pollutants (NESHAP); Nuclear Waste Policy Act of 1982; Low-level radio-active Waste Policy Amendments Act of 1985; Uranium Mill tailings Radiation Control Act 19978; RCRA, NEPA and NHPA process that includes honest and independent economic and environmental impact statements, Information requests, health effects and workers’ disparity issues at the Lab and how impacts affect the surrounding traditional and historical communities. (See attachment I: Ken Silver Testimony to the NM Legislature on Health Studies and CDC information requests).

The overwhelming majority of residents within a radius of a half-mile, a mile, and five miles or 20 miles, from the federal facilities in the State of New Mexico are people of color. The federal government, nearby municipalities nor the state agencies or government did not consider the appropriate data and/or public comment or testimony showing clearly that the greatest potential impact would be borne by residents who were largely of color if there new uses were permitted from the operations of the facilities or in a criticality event.

- ◆ Another reason for the failure these entities to act, is the fear of the hammer of retribution. DOE's and UC LANL exert a continued a threat of massive lay off's which results in economic blackmail and coercion of public officials. These threats result in the elected officials' inability to muster the political will to protect the overall public welfare of the citizenry. This causes a chilling effect through out the community.
- ◆ The failure of DOE UC-LANL's administration to include correct and factual information in detail that is available as public information is inexcusable. (See attachment G/ MDA-H).
- ◆ Water diversion planning reports have not mentioned any mitigation efforts of TOC's or other harmful contaminants to the water supply over time. The Plume of Doom that is suspected to reach the drinking water of all the above mentioned communities may be irreversible.

The failures of the current administration's to consider these issues and the disproportionate potential impacts of the facility on the Pueblo/ Latino communities are striking. This demonstrably discriminatory policy is illegal under Title VI and its implementing RCRA, NEPA and NHPA or any other federal or state regulations and in the implementing of environmental regulations under the described Acts. These issues must be entered into a record for a congressional report.

3. **THE DOE, UC LANL CRITERIA AND METHODS OF HANDLING COMPLAINANTS AND OTHER MEMBERS OF THE PUBLIC WHO SEEK TO ENFORCE TITLE VI HAVE THE EFFECT OF DISCRIMINATING AGAINST COMPLAINANTS AND OTHER PERSONS DUE TO THEIR RACE OR COLOR**

The Title VI regulations provide that a recipient of Federal financial assistance shall not use criteria or methods of administering its programs which have the effect of subjecting individuals to discrimination due to their race or color. The DOE UC LANL is a recipient of federal financial assistance. Their bias, hostility and intimidation toward Complainants demonstrate DOE's orchestration of stalling the public comment aspect of any review process. Tactics used by DOE UC LANL to stall NMED's oversight of the RCRA process and virtually eliminates public commenting on waste issues at LANL. DOE UC-LANL has focused its criteria on methods of administering its programs that delay, impede and prejudice outcomes by failing to provide full and fair public participation, throughout a permitting process. The yearlong negotiations with the State of New Mexico ED have resulted in no serious action being



taken by the State Agency. This failure to protect citizens of Latino and Pueblo heritage is discriminatory on its face.

The current regulatory process disallows any precautionary principle from being applied. (See Attachment E). Thus, DOE UC LANL has the effect of discriminating against Pueblo/Latino members of Complainants because of their race or color. Therefore, The DOE and UC LANL have established a pattern or practice of using criteria or methods of administering its environmental programs, workers disparity issues and occupational and community health issues, which have the effect of discriminating against Pueblo/ Latinos because of their race or color.

**A. The DOE UC LANL and Have Established a Pattern or Practice of Bias, Hostility, and Intimidation in Favor of Industry and Against Pueblo/Latino Complainants, Creating and/or Adding to Discrimination Against Persons Due to Their Race or Color**

The DOE UC LANL have established a pattern and/or practice of criteria or methods of administering its programs, which has the effect and the intent of subjecting individuals to discrimination due to their race or color. They do this by their callous disregard for the human health environment, through the continuation of the production of nuclear and bio-weapons programs, in a cloud of secrecy, under the guise of economic development and threat of mass lay-offs, while not telling the truth about exposures, toxic releases and/or emissions. All this is in favor of the industry and to the detriment of the surrounding communities, the region and ultimately the world. By the very nature of nuclear proliferation programs, is a short-term destructive model for deterrence that leaves the long-term consequences to the public. In this case low income communities. This pattern of bias and hostility has had the effect of creating a disparate impact and discriminating against Pueblo/Latino members of Complainants, as well as other Pueblo/Latinos in the state, because of their race or color.

Established practices and policies of the University of California and the Department of Energy have a disparate proportion of Hispanic and Native American individuals employed due to their race or color. These practices and policies also impact all people in the region but specifically impact the people adjacent the LANL reservation and pose an imminent threat to the public health and safety. (See Attachment H: Hispano Round Table Letters to DOE and NNSA and a copy of the Welsh report).

**B. The DOE Obstruction of Meaningful Public Participation Has Had the Effect of Discriminating Against Latino Complainants Due to Their Race and Color**

- ◆ Tactics used by DOE LANL to stall the RCRA process and virtually eliminate public comment.

- ◆ The University of California, operating contractor of the DOE Citizens Advisory Board (CAB) has stacked the CAB with employees. The Board thwarts citizen's public participation through intimidation by embarrassing citizens when they come before the CAB.
- ◆ University of California and LANL did not show up for NM Legislative Oversight Hearing Public hearings to listen and address concerns the Legislature had until, Feb 1<sup>st</sup>, 2002 and in October of 2001, and only a couple of meetings previous to this, after the formal establishment of the legislative memorial.
- ◆ LANL has paid public participants \$25.00 an hour to attend informational meeting to survey race and discrimination issues at the Lab.
- ◆ Other informational meetings on risk management have been given to the Community. They are seldom attended by the public because of tactics used by the Lab that do not allow questioning and the strictly controlled public commenting environment where no other point of view is accepted. LANL also has a psychologist on hand from the Lab who stands and corrects people's language skills. She has corrected the choice of words and points out troubling and confrontational language because it does not agree with the LANL's risk management process. These informational meetings are one-sided.

This continuous behavior, pattern and practice has caused a chilling effect on the communities.

#### 4. CONCLUSION

For the reasons set forth in the above, Complainant alleges that the DOE UC LANL and NNSA's actions prove a continuous behavior of pattern and practices which have run rough shod over the civil rights of the surrounding communities, in particular low income and people of color. The current upgrading and expansion of existing facilities, including continued dumping in waste sites, and expansion of facilities for the proliferation of biological and nuclear weapons violate Title VI and other acts/laws under the U.S. Constitution and agencies regulations. Accordingly, Complainants request that Commission on Civil Rights accept this complaint and hold an investigative hearing in Santa Fe, New Mexico as soon as possible. Respectfully submitted on September 25, 2003,

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 Elaine Cimino  
 Director  
 La Cienega Valley  
 Citizens for Environmental Safeguards (CES)

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CC: Copied document enclosed to the following individuals. Include this printout as page 11 of the request

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## Attachment A

### *"Race relations,"* in The Manhattan Engineer District

The pattern and practices of discriminatory behavior cited in the citizen's complaint filed by the La Cienega Valley Citizens for Environmental Safeguards have their roots in what might loosely be called a policy on race, which evolved during the establishment of the Manhattan Engineer District. Under this military program present day Los Alamos National Laboratory (LANL) began as Project Y.

Though this policy on race was not formalized, and is not found in any specific record, it can be discerned from the study of a string of often-conflicting memos and orders, in records of official and unofficial meetings, and in the memories of workers. Recent discriminatory behavior by hiring officials and management of Los Alamos National Laboratory is very well chronicled by the newspaper and TV media. The link to how this patterns and practices of discriminatory behavior evolved from the early days of Project Y is presented in the discussion of these practices in Chapter 7, in the book *Atomic Spaces*, by Peter Bacon Hales, which was published in 1997. The discriminatory manner in which the lands of the Pajarito Plateau were taken, which Hispanic farmers and ranchers owned, set the stage for the present day discriminatory practices at Los Alamos National Laboratory.

In summary, the Los Alamos National Laboratory has made it a practice to hire minorities reluctantly. That is hire only when it is absolutely necessary and then hire minorities into jobs considered too dirty or disreputable for whites. Another tack is to hire minorities into low-skill low-wage positions regardless of the educational level of the individual. This tack is viewed as one that limits opportunities for minorities to advance in the organizational ranks. The minority worker is systematically kept from attaining a job of responsibility in the operations of the Laboratory. A suit brought by Hispanics in 1995, and which was eventually settled in 1998 demonstrated that LANL systematically discriminated against the Hispanic workers that were laid off. Again and again we can chronicle the many instances of discriminatory behavior by LANL management against the Hispanic and other minority workers. A practice and pattern, which began at the time the Hispanic lands, were unjustly taken for establishment of the Laboratory. The taking of the property is being contested via a separate compliant in Federal District Court.

## Attachment A: Background of the Complaint

### I. BACKGROUND

#### History

The communities affected perchlorates or other contaminant pathways from Los Alamos National Laboratory include the Counties of Santa Fe, Los Alamos and Rio Arriba, the Pueblos of San Ildefonso, Santa Clara and Cochiti, other traditional and historic Pueblo/Hispanic downstream communities. First nation peoples, the Pueblo cultures of New Mexico occupied this land for over 5000 years by making use of the water from artesian springs along the Rio Grande corridor. These communities were conquered by Spanish colonization in the 1600's, reclaimed in 1680, and then re-settled after 1700. When the Spanish colonists re-arrived, these communities were set up as outposts. From the time of the re-conquest in 1692, the descendants of the Spanish Colonial people have occupied the region, which were historically connected by the El Camino Real. These areas have been designated both by state and national historic statutes under National Historic Preservation Act (NHPA), both by the sovereignty claims of the Pueblo peoples and by the Hispanic descendants.

The history of the Lab's sitting is another devastating story of the displacement of people of color and low income. The short story is that Mr. Oppenheimer liked the place because it was "isolated". Isolated because people of color did not count as people. In fact the Pajarito Mesa has been inhabited for over 5,000 years. Eminent domain was enacted, the people were removed and the federal land transfer took place. Over time the Civil Rights Act was implemented, what was thought to be a desert turned out to be a diverse ecological system that supplied the sustenance of water and farming for thousands of years. The region now has over 1,000 contaminated waste sites.

According to the 2001 U.S. Census, these areas have the lowest per capita income and the highest concentration of Latinos in the County and City of Santa Fe/Rio Arriba and with less than 1 percent people of color living in Los Alamos County. Economic census data also indicates Los Alamos County has the highest per capita income, while the surrounding areas have the lowest i.e. the US Census and the Poverty in the United States Report by the US Census Bureau. Most residents who are Lab employees are hired through its contractors. Many of the Hispanic and Pueblo people are paid lower wages than their Anglo colleagues (see attachment H). Lower paying jobs are hired from the surrounding communities

## **Attachment B**

### **Environmental Issues\_**

#### **Perchlorate and other contaminants in the regional water**

**Clean Water Act – Safe Drinking Water Act** violated by DOD and DOE and LANL with perchlorate at the Rio Grande threatens city water supplies – for the Pueblos, the Cities of Santa Fe, Los Alamos and communities downstream. The City of Santa Fe adopted a task force to examine the potential of contaminants from the Cerro Grande Fire and Los Alamos National Laboratory (LANL). LANL and the DOE have never acknowledged the possibility of contaminant pathways that might exist or develop, carrying the radionuclides, total organic compounds (TOC's) and other heavy metals to the Rio Grande. On Jan 10, 2002 the SF Water Quality Task Force released a report written by Ken Silver and other task force members. The NMED DOE Oversight reported to the Taskforce that perchlorates were found in the springs adjacent to the Buckman Well Fields (where the City pumps its water). At the time, a question existed as to whether the Rio Grande acts as a barrier or if the cone of depression is pulling the contaminants from under the river into the City's water supply, the Buckman Well Fields. The question still exists about other contaminants in the Rio that the task force was not aware of or did not look at the time. But more importantly, LANL knew 8 months previous that the perchlorates existed but did not admit to it until the task force started focusing on pathways and the evidence was uncovered. It is the first time a suggested pathway was known to exist and suspected it came from Mortendad Canyon to the bottom of Pajarito Canyon to the springs because of years of a legacy of years of waste dumping.

**\*\*The Resource Conservation and Recovery Act –42 U.S.C.A §§ 6942 to 6949 and the Clean Water Act 33 U.S.C.A. §§ 1251 to 1387** Failure to comply with NEPA and NHPA is arbitrary and capricious conduct and violates plaintiff's right to protection under 542 U.S.C. Sec. 1983 and the United States Constitution.

This area has an extensive history of environmental neglect, which lasted nearly 50 years and included dumping contaminated nuclear waste over the sides of the plateau and into of arroyos. Furthermore, the concentrated development of the area due to expansion and new facilities show patterns of the discriminatory land use practices. The approval process for the siting of facilities that has the potential to affect the health and safety of the peoples of the region. For example, \*\*42 U.S.C. §§ 2000d.

In a response, GIGO report submitted by Citizens for Environmental Safeguards, our Geo-Hydrologist Zane Spiegel points out some important factors. As follows on page 15 Item 15 2 7/8 (B):

15      2      7/8      (A) Explain how the Buckman [ZOO] with the collector well (Fig. 29) is allegedly "similar.." to its zone without the collector (Fig. 27), but allegedly substantially increases drawdowns (up to 50 m) in Buckman wells (see SC (13-3-6)).

[Actually, there is a significantly different reduction in the Buckman ZOO near the collector well (Fig. 29), but since the Rio Grande (Fig. 27) and collector well ZOO (Fig. 29) are aligned into the NE corners of both of these "Planar representations..." , rather than along the Rio Grande itself, these anomalies might be due to defects in modeling (arbitrary limits of ZOO study in this area?). Explain/correct problem.]

(B) The fact that (line 8) "The collector-well [ZOO] is outside LANL boundaries." is irrelevant. What is relevant, among other factors, is that some waste sites are also "outside LANL boundaries", according to maps prepared by LANL and made available to this reviewer (Spiegel, 2001). Unfortunately for other readers of this Analysis, the authors have kept that information a secret, along with (until (16-2) "...five water table locations in vicinity of LANL". While the "outside " waste sites north of LANL boundaries might not be major ones, their existence should have been acknowledged and quantified.

**Most of the Analysis domain's natural recharge, natural discharges, and well discharges, including LANL's Guaje Canyon, Otowi, and former (1940's to 1991) Los Alamos Canyon (now San Ildefonso Pueblo) well fields; other wells for six Pueblos; City of Espanola and other community wells; and thousands of other wells in the Analysis domain are also "...outside LANL boundaries.", but all of them are highly relevant to LANL's responsibility to tell the whole truth as soon as possible, instead of hoping that no one will recognize the gross deficiencies in their technical reports.**

*This information has been virtually ignored by DOE for the past 2 years and so far they have ignored all our information requests, as to why they have not responded to the FOIA? And why they have ignored available public information that would inform LANL's science reports on water "Capture Zones".*

The DOE oversees the appropriations set-aside for the expansion of the facilities of the at DOE/LANL federal facility. DOE federal facilities are subsidized by the federal government, which LANL and University of California area recipient of federal financial

assistance from DOE, DOD, and the other agencies, has violated Title VI US RCRA and other environmental regulations, and the respective agencies regulations, by allowing:

- Cleanup at LANL AREA G is a fallacy, since there is "NO CLEANUP PLAN" either by the Lab or by the state. So to implement levels of cleanup (of what?) are at issue. Therefore, a question is raised, "Does a State have a right to regulate waste within it borders in order to protect its resources (i.e. water, air, public welfare interests) from being contaminated especially when the particular resource in question is the main source of (life) water in the State? A migration of contaminants will affect the drinking water in many communities surrounding LANL. While the exposures from contaminate have already affected the health of workers at Area G. Area G is one of the largest Landfill sites at Los Alamos.

#### **A. LANL's TOXIC LEGACY**

- 1,000 contaminated sites at LANL
  - 25 are hazardous and nuclear landfills
- AREA G - Waste buried in shallow pits and shafts covered with little as 3ft of earth, as it was 1950's

#### **B. THERE IS NO PLAN for Clean up or Waste disposal**

#### **C. WASTE DISPOSAL IS UNREGULATED**

- No licensing process
- No Landfill closure plan
- No commitment of post-closure care
- No performance bond
- No disclosure of waste
- No external regulation of disposal

- II. **PURPOSE AND BACKGROUND:** *Legislative oversight of one item-Area G.* Of the three Labs: LANL is the recipient of dirty work which is facilitated by a handy dump. Lawrence Livermore National Lab (LLNL) is the lab the state wants but it has LANL. LLNL has no waste dump on site and has exhumed and removed all old dumps it did have. LLNL nuke waste goes to the Nevada Test Site (NTS). NTS has about one-half the rainfall of LANL Area G, has no nearby stream, springs and sand sits in a site so contaminated it will never be cleaned. It wants more waste to justify its existence. Disposal, even with transportation, would be cheaper for DOE than the present Area G disposal, because everything at LANL costs too much.

Not having Area G is probably incompatible with a) having a pit production facility at LANL and b) highly secret explosions that generate contaminated steel spheres some 6 ft or more in diameter, which may be noticeable to ship. This program is probably essential for new weapons designs. The secrecy of Area G is a major component of its value to DOE. Another secret waste stream coming to Area G is the Plutonium-238 powered supplies used for



clandestine listening posts around the oceans and world, the existence which has only been hinted at in open literature.

The nuclear weapons program with all its secrets and billions is very fragile. Because most people do not believe in weapons of mass destruction either as weapons or careers and there is trouble recruiting and training staff.

Area G would never be permitted in any state with a respectable environmental constituency. Texas defeated a much smaller, civilian nuclear waste dump in much more suitable locations.

Closing area g would likely bring more funds to LANL, even though the dump itself is too expensive and alternatives are cheaper. Cleaning up Area G could be very expensive, and would create jobs—dangerous, but not as dangerous as underground mining and done before too many more years pass. Once waste disposal has halted then the state and tribes could pursue natural resources damages claims and win many, many, many millions.

### III. POLICY:

- **LEGISLATURE** – the exception to the ability for New Mexico to regulate its waste was provided at WIPP where separate legislation might provide some protection.
  - Legislate “waste acceptance criteria.”
- **FEDERAL** –
  - DOE - “Clean-up” - A program by name not the removal of waste from the environment. DOE has spent 700 million. Few total “cleanup’s” have been done because of the continued disposal; most of the funds have gone to UC overhead or paid for research.
  - UC and DOE wants No regulation of AREA G and other hazardous waste landfills at all. The Department of Justice filed a lawsuit on behalf of UC LANL and DOE against the State of New Mexico -NMED which aims to decimate New Mexico’s ability to regulate nuclear waste or environmental cleanup in New Mexico
  - There are currently 10 lawsuits underway.
  - Four more dumps are planned- the amount of waste is large a mid range estimate 2-3 rotundas worth of widely varied nuclear waste each year until 2070. 10 % comes from building demolition and environmental cleanup. The rest comes from weapons manufacturing. This is 2.5 million barrels of waste with no where to go.
  - DOE, through Richardson’s administration at DOE, tied the hands of this State, and others, and addressed many of the issues that now threaten the health and quality of life of residents in New Mexico.
  - DOE’s arrogance risks the public health and safety in the State and has resulted in a corrective action order, which is at the center of the pending lawsuit.

- DOE strategy has opened up several other issues at the same time as a smoke and mirrors tactic. DOE's shell game keeps confusing people by promoting many other issues while bringing up the Bush Administrations agenda such as furthering weapons (PIT) production. Meanwhile, they are inflaming waste disposal problems, permitting actions, interfering with even a plan for clean up and on an international level implementing policies that are violating treaty agreements, never mind continued contamination to our water and air in the state of New Mexico and specifically to communities of color.
- **STATE-** Unregulated nuclear waste disposal defines a relationship of subjugation and creates a future where governmental failure allows "rogue" institutions to exploit the state's resources and subvert its regulatory functions making a "good business climate".
  - The State must distinguish between storage and disposal
- **NMED-** Finally determined there might be an "Imminent and substantial endangerment" of human health and the environment at LANL – issued a corrective action order.
  - Corrective Action Order is - there is NO CORRECTIVE ACTION. Instead it ordered several years of further study,
  - Risk assessment and to keep the federal dollars flowing to LANL Most of the requested studies will accomplish no cleanup and most will not even relate to cleanup.
  - Letter of Intent- preemptive regulatory surrender signaling that aggressive cleanup will not be necessary in return NMED receives \$700.00 from DOE.

#### IV. RESPONSIBILITY:

Attorney General and NMED is charged with regulating the site neither has fulfilled its obligation to the public interest

**Attorney General:** NM A.G. has said last year that the site of "Area G" has been operating illegally since 1985.

- Then there are the political ramifications of the Attorney General not following through on some of these issues partly because of other legal concerns. There is other court decisions that are going to influence outcomes here in New Mexico and around the country.

**NMED:** NMED is on a course of action or track, which is costing the State hundreds of thousands of dollars in litigation, keeping attorneys and scientists, employed. Then there is the real problem of addressing regulation enforcement by the State on DOE.

**Federal:** Rule of thumb: LANL costs are 10x industrial costs

DOE says a) some Waste is too radioactive to transport to the Nevada Test Site (NTS) b) DOE does not want its waste disposal hostage to Nevada politics. Nevada would have "Waste acceptance criteria," which could be used to exert leverage over DOE for appropriations --Less freedom of action for DOE.

**LIST OF ENVIRONMENTAL ISSUES AT THE LANL TO BE ADDRESSED:**

- **CONTAMINATED GROUNDWATER**

See the above excerpts

- ***Water availability for more growth at LANL?***

- "...DOE transferred ownership of 70 percent of its water rights to me County and leases the remaining 30 percent. Los Alamos County is currently pursuing the use of San Juan Chama Trans-mountain Diversion Project water to secure additional water rights and supply for its remaining water customers. Any potential shortfalls in available water capacity will be addressed as demand increases." (DOE 2003) P. 5-275 the modern Pit Facility draft EIS under Section 5.8 Cumulative Impacts, For LANL Resource Requirement Impacts.

- **CONTAMINATED AIR**

- **WORKER'S HEALTH EFFECTS-** Testimonies available in hearings held by Senator Bingaman and Congressman Udall about cancers in Area G workers, who are presumably struggling for some compensation with other exposed DOE workers.
- Price-Anderson waste storage violation at TA-55 Bldg. 185 which created a Category II nuclear facility during the Cerro Grande Fire. [DOE did not know about!], which the basement is stacked with waste giving radiation doses to worker's there.
- LANL GRT's – See separate report
- LANL IMPACT FEES –"Impact Fees" before this time would only foolishly increase NM's dependence on waste disposal.
- BSL -3
- Modern Pit Facility draft EIS
- Advanced Hydro test Facility
- Other Production facilities/activities
- RCRA Permit
- **Corrective Action order - Area G Closure**
- UC Contract or whomever?
- Accelerated Cleanup – Quick to WIPP
- **Congressional and State Legislative Actions**
- EIS's State-Wide
- Other Legal Actions
  - Clean Water Act
  - Construction funds for "Light" Labs

## Further Water Issues

- Allows LANL to emit perchlorates and toxic substances, other known and unknown amounts of radionuclides into or near the drinking water supply for the region.
- The Bureau of Reclamation has supplied funding to the Pueblos, City and County for the planning of the water diversion projects and transport of water lines. Unfortunately for the Bureau of Reclamation funds have not included plans for the filtration systems needed nor a cost-benefit analysis that would be required to mitigate the pathways of radionuclides that will quite possibly infiltrate the water supply of the City of Santa Fe from LANL- a DOE site (there are found trace elements at this time).

The complainant has also stated that DOE violated, RCRA, NEPA and NHPA requirements by US government Administrative policy of federal facilities expansions of LANL, using tactics to delay public participation and public comment and by siting facilities that has a disparate impact of communities of color and by disparate employment practices of people of color at the laboratory including workers environmental exposures. NEPA Title 1 Sec. 101 {42 USC § 4331 (a), (b), (c):} Sec 102 [42 § 4332 A, B, C, D, E, F, G H, I] This section of NEPA states:

- (C) Include in every recommendation or report on proposals for legislation and other Federal Actions significantly affecting the quality of the human environment, a detailed statement by the responsible official on –
- V. the environmental impact of the proposed action,
  - VI. Any adverse environmental effect which cannot be avoided should the proposal be implemented,
  - VII. Alternatives to the proposed action,
  - VIII. The relationship between the local short-term uses of man's environment and the maintenance and enhancement of the long-term productivity. And Any irreversible and irretrievable commitment of resources which would be involved in the proposed action...

All these issues impact the low-income, Pueblo and Latino communities. DOE is not only an active participant in the system of siting these facilities, but continues to use a method of administering its permitting authority that results in discriminatory outcomes.

The CES is filing this complaint within 180 days of the date of DOE draft permit approval. \*\* 40 C.F.R. § 7.120. The CES has provided a priority list to Office of Civil Rights, and a complete brief of our complaint upon request. The Complainants request that the EPA, DOE, DOD, make its initial decision accepting or rejecting this complaint within 21 days of the filing of that summary of concerns.

**ATTACHMENT C- Tewa Women United**  
**Statement before the**  
**NM Legislative LANL Oversight Committee 9/8/03**

Unbe unging dee,

There is an urgent critical dialogue in which the legislative oversight committee must engage with Indigenous and mex-chicana women of these surrounding communities, not just governing bodies.

Make no mistake about the power of personal testimonies about the toxic effects being seen and witnessed in our homelands. Also, Make no mistake about disinformation or not telling the whole truth unless threatened with civil or criminal actions of the laboratories day to day operations. It is just as deadly as if the weapons of massively destructive force were dropped in our backyards here in the Pojoaque and Espanola valleys.

We, the Peoples of Color who live near the nuclear weapon's research and production laboratories including biological and chemical warfare research and testing have been victims of war for over 60 years.

Without our consent, these unnecessary yet highly toxic exposures violate our right to life, liberty and security of person.

Environmental racism needs to become clearly understood by all people if environmental genocidal practices are to be stopped. The call for reduction of nuclear weapons has been sent long ago by the United Nations. For us this means also uranium production, testing of weapons, nuclear research, and the storage of toxic waste in solid and liquid forms. There is no "peaceful use" of the nuclear and radioactive activities when our rights, values and beliefs are limited, disabled or genocide.

We, Tewa women of Tewa Women United are aware that since 1943, the humanitarian laws of armed conflict have been violated. And, we who's homelands have been sacrificed with this continued toxic exposure because of "the radioactive materials as weapons" research, development, testing and production was done under the leadership of **uc/ lanl /doe/dod**. Even if our lands were not the intended battlefields, we still were subjected to the same geographical, temporal, humanitarian and environmental negative impacts of these radioactive materials used in actual pre-emptive attacks.

If public consciousness, is not upheld where is our humanity or sanctity for life? If international laws are not honored, where is our right to live upon our earth mother? Right now, this patriarchal U S governing system is raping mother earth and killing all life forms- who do not have voices or their presence is being ignored until the signs of death are visible.

Such as, Children lost to still births, our relatives & friends lost due to terminal cancers. Our pine, pinion trees lost. The continued rapid spread of illnesses, birth defects, asthma & leukemia among our young and old, our compromised immune systems, our sources of earthen livelihood destroyed or contaminated and not available to interact with and unavailable to use for healing purposes, which also ties disparities to the drug and alcohol violent taking of lives, to name a few..

The declaration of human rights, the right to life, liberty and security of person is being violated because the toxic effects of this nuclear industrial complex upon the hill is disregarding our ancestral presence and invading and creating disabilities in our physical, emotional, psychological and spiritual spheres of influence and life.

How will this legislative oversight committee see beyond the Euro-American mentality and be culturally inclusive of traditional ways of measuring invasion of our spiritual spaces of mind, heart and spirit? Are sacred sites unpolluted from toxicity with the mere moving of stones out of the way? Can we cleanse our minds, hearts and spiritual selves with contaminated water? Whose frame of reference are we to use to guide us out of this created sense of hopelessness and terror tactic used upon us to keep silence or supplied with tainted money as a carrot dangling in front of surrounding low income communities...

Yes, there are also these tribal accords and cooperative agreements, but relationships to these agreements should be of a mutually beneficial nature or they can be declared nullified. This was done before and can be done again if the accords and agreements limit our full and consensual participation in the toxic business of UC/LANL/DOE/DOD. This unlawful use of power, & authority must become public consciousness for public and private citizens.

To be not informed, mis-informed, and ill informed or omissions of vital information or such is just as deadly. We are seeing the start of Commission on Civil Rights - Attachment C -

Tewa Women United to the 9/8/03 NM Legislature

long term toxic geographical, environmental, health and the genetic effects of the radioactive, nuclear, chemical, and biological research, development, testing and production of massively destructive weapons. All this for the US military governmental usage in its warring, terrorizing and senseless death of humans and our planet, our mother to all life.

Our breathe of life is connected to the land, air and water and to the spirit of our creation.

We have the responsibility and ability to uphold the sanctity of life. We must become life givers.

Let us excise our right to do proper oversight by being:

- 1) Gender inclusive in oral or written testimonials of health effects by grandmothers, mothers, aunts, sister, nieces and much more.
- 2) Gender inclusive in how public sessions are called, held and informed about cultural resources impacted by LANL/UC/DOD/DOE business.
- 3) aware of the disparate environmental impacts from the tribal and mex-chicano/a communities perspectives
- 4) aware of the geographical /territorial terrains, home to humans, animals, flora and fauna, spirits seen and unseen and the connective relationships to the tree of life.
- 5) By demanding and use outside neutral testing partnership and facilities to review information.
- 6) By researching the disproportional relations of the toxicity to the need to use nuclear weaponry on world populations. Who benefits from death?
- 7) By researching the disproportional social economical, health and wellness lost of state and federal programs to the amount of our tax payer money given to LANL for production of nuclear, chemical, radioactive, and biological weapons use by tax payer monies. Yes, Indians also pay taxes in various financial arenas.

I thank you for your listening time. And please do create some more listening post opportunities.

Kathy Sanchez- TEWA Women United

## **Attachment C – Public Welfare and Cultural Resources**

Current environmental practices impede and impact the public welfare by DOE/LANL and does not effectively indicate any consideration for what an increase of operations will do to the wildlife (eagles, hawks, other birds, and domestic animals such as horses, cattle sheep, etc.) in the regional areas surrounding the Lab. There is neither any mention of local archeological sites in the Plan. Additionally, cultural resources to the communities are highly impacted such as: sacred sites, petroglyphs in the area stand to be affected due to the increased mitigation of pollution.

Failure to comply with NEPA and NHPA is arbitrary and capricious conduct and violates complainants right to protection under 542 U.S.C. Sec. 1983 and the United States Constitution.

The FHWA approved the WIPP Route SR 599, which was built to haul nuclear waste through our community, and now it is allowing more access roads and crossings with lights that will present definite safety hazards. Slowly local land use practices are allowing urban growth to encroach on the SR 599 thus whittling away the original intention of the WIPP route, which was to haul nuclear waste from Los Alamos. If there were to be an accident in this area it would have a serious environmental impact on a predominately Hispanic and low-income population, specially in the Southwest sector between the CR 70 and the I 25.



## Attachment D: Public Participation Freedom of Information

1. Years of violations of the FOIA and pattern and practices by refusing or ignoring requests to provide information on health issues, on environmental issues and other types of information. (See the Los Alamos Workers Project and CES FOIA attempts that document).
2. Currently the DOE-“ National Nuclear Security Administration (NNSA) recently proposed construct up to 24 new structures at LANL without completing a full environmental impact statement for a project. Rather they release a 63-page environmental assessment for the project that would replace and consolidate that entire two-mile Mesa Complex. The Two-Mile Mesa Complex is the location of LANL Dynamics Experimentation Division (DX). DX performs dynamic experiments to study properties of and enhance understanding of the basic physics of the state and motion of material used in nuclear weapons. These studies include manufacturing high explosive components for nuclear weapons performing explosive testing, characterizing high explosives and developing surveillance of systems for detonation of explosives. DX uses natural and depleted uranium, highly enriched uranium, plutonium metal, beryllium, mercury and other hazardous metals and solvents in its testing.” *–Excerpt from CCNS News Update.* A five-year plan only allows 21- day commenting period. This plan and action by the NNSA, DOE /UC –LANL shows the continuous behavior of pattern and practice without appropriate public input.
3. DOE Citizens Advisory Board (CAB) is stacked with LANL and DOE employees. This action thwarts citizens’ public participation because they have used the intimidation tactics of embarrassing citizens when they come before the CAB. UC LANL did not show up to public hearings at the State legislature until October of 2001 and in Feb 1<sup>st</sup>, 2002 when the LANL Oversight Committee was established by legislative memorial.
4. In August, 2003, members of the public were paid \$25.00 an hour to attend a public informational meeting at which a survey was given on whether discrimination tactics were used by the Lab. Other informational meetings on risk management have been given to the Community that are seldom attended by the public because of tactics used by the Lab that do not allow questioning, and maintain a strictly controlled environment where no other point of view is accepted. LANL runs a “Dog and Pony show” presentation only, with many LANL employees in the crowd who quickly stand to dismiss any citizens’ objections to what the Lab is doing. This is done through ridicule, classism and elitism as well as reference to educational level. Furthermore they have also had psychologist on hand from the Lab who stands and corrects peoples language skills and choice of words and points out that their opinion is troubling and confrontational because it does not agree with the LANL risk management process.

## **Attachment E: The Precautionary Principle / Environmental health issues**

**"When an activity raises threats of harm to the environment or human health, precautionary measure should be taken even if some cause and effect relationships are not fully established."**

Key elements of the principle include taking precautions in the face of scientific uncertainty; exploring alternatives to possible harmful actions; placing the burden of proof on proponents of an activity rather than on the victim or potential victims of the activity and using democratic processes to carry out and enforce the principle- including the right to informed consent. ...

According to the precautionary principle, when substantial scientific evidence of any kind gives us good reason to believe that an activity, technology or substance may be harmful we should act to prevent harm. If we always wait for scientific certainty people may suffer and die and damage to the world may be irreversible. ...

When Federal money is to be used in a major project such as developing federal waste program the planners must produce an environmental impact statement to show how it will affect the surroundings. The public has the right to help determine whether the study has been thorough and all the alternatives considered. ... But most environmental regulations are aimed at cleaning up pollution and controlling the amount released into the environment. They regulate toxic substances as they are emitted rather than limiting their use or production in the first place.

There are some major loopholes in our regulations and the way they are applied. 'One loophole is the use of scientific certainty. If we can't prove something scientifically it must not be true. The lack of certainty is used to justify continuing to use a potentially harmful substance or technology.

Risk assessment is to determine whether a substance or practice should be regulated. One problem is that the type of risks considered is very narrow usually death from cancer. Another is that those who will assume the risk are not informed or consulted. For example people who live near a facility that emits toxic substances are rarely told of the risks or asked whether they accept them.

A related loophole is the "Cost-benefit analysis" determining whether the costs of the regulation are worth the benefits it will bring. Usually the short-term costs of the regulation receive more consideration than the long term costs of possible harm – and the public is left to deal with the damages. Many believe it is impossible to quantify the costs

of harm to a population or the benefits of a healthy environment. Commonly risk assessments are used to justify hazardous practices.

### **Pollution is Personal<sup>2</sup>**

The Massachusetts Precautionary Principle Project: Clean Water Fund, Lowell Center for Sustainable Production, Massachusetts Breast Cancer Coalition and Science & Environmental Health Network.

“Pollution is personal, Chemical pollutants are found in our breast milk and our sperm, our amniotic fluid and fatty tissue, our blood, bone and urine. There have been alarming increases in the incidence of certain diseases and many of them have suspected links to environmental pollution. These diseases cannot be completely explained by other causes and their increase mirrors the increase in toxic production, use, and release. Illness is the result of a complex interaction of genetic, social and environmental factors, but we must not ignore the environmental connection.” excerpt<sup>1</sup>

“New Mexico’s Right to Know: The impacts of Los Alamos National Laboratory Operations on Public Health and the Environment” Authors; Bernd Franke, Catherine M Richards M.S., Steve Wing, Ph.D. and David Richardson Ph.D. Prepared for Concerned Citizens for Nuclear Safety August 2003 <sup>4</sup>

“...finds that the emissions from LANL into the air may be as many as 20 times greater than previously estimated. The report finds increase incidence of breast cancer. Melanoma, non-Hodgkin’s lymphoma, ovary, prostate testicular and thyroid cancers in Los Alamos County. Furthermore the report finds that the occupation health studies at LANL have been discriminatory and incomplete. ...” See Statement attached.<sup>5</sup>

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<sup>1</sup> The Science and Environmental Health network [www.sehn.org/rprecaution.html](http://www.sehn.org/rprecaution.html)

<sup>2</sup> Pollution is Personal The Massachusetts Precautionary Principle Project: Clean Water fund, Lowell Center for Sustainable production, Massachusetts Breast Cancer Coalition and Science & Environmental Health Network.

<sup>4</sup> “New Mexico’s Right to Know: The impacts of Los Alamos National Laboratory Operations on Public Health and the Environment” Authors; Bernd Franke, Catherine M Richards M.S., Steve Wing, Ph.D. and David Richardson Ph.D. Prepared for Concerned Citizens for Nuclear Safety August 2003 <sup>4</sup>

<sup>5</sup> Letter to the Editor CCNS Joni Arends

**ATTACHMENT F**

**MANY OF THE COPIED RECIPIENTS HAVE ALREADY  
RECEIVED A COPY OF "NEW MEXICO'S RIGHT TO KNOW: THE IMPACT  
OF LOS ALAMOS LABORATORY OPERATION ON PUBLIC HEALTH AND  
THE ENVIRONMENT"**

**PUBLIC HEALTH STUDY COMMISSIONED BY CCNS**

**IF YOU DO NOT HAVE A COPY  
CCNS WILL BE HAPPY TO PROVIDE ONE TO YOU  
PLEASE CONTACT  
CCNS 505 986-1976**

## Memorandum to LANL MDA-H Focus Group

**Clarification and augmentation of references to Zane Spiegel's comments at meeting #6 (August 20, 2003) of LANL MDA-H Focus group as reflected in meeting minutes sent to all group members**

Copyright, 2003 Zane Spiegel (i.e. all statement herein, if use must be acknowledged).

By Zane Spiegel, Ph.D., Professional Hydrologist, September 15, 2003

Note on the proceedings of the Sixth Meeting on LANL MDA-H Focus Group contain several statements that require clarification and augmentation, for the public record as well as for benefit of the focus group members who were or were not present at the meeting. The two notes which referred to statements or written comments by Zane Spiegel, and one which omitted essential details of Zane Spiegel's oral comments on George Rice's report are discussed as follows:

1; Re: Notes p. 1 "Introduction and Handouts" refers to ...copies of comment (two documents) submitted by Zane Spiegel" which were provided to all Focus Group participants. These documents are:

- a. A one-page memo, written and faxed to Southwest Planning and Marketing and MDA-H Focus Group on August 16, 2003, requesting LANL's immediate response to the Focus Group to allegations by Zane Spiegel made during the past three years that LANL's studies of recharge potential at mesa waste deposit sites were deficient. During these three years, despite numerous opportunities for LANL to respond to those well-documented allegations, particularly regarding the irrefutable long-term evidence that recharge to ground water occurs primarily in wet seasons and years at intervals of more than the period studied by LANL. Not a word has been said or written by LANL on this topic to the writer or the official groups to which he belonged, nor does the massive CMSR deal with this issue in any significant or defensible way. To date, I have not received the information requested, acknowledgment of receipt of the request, nor any indication of when I should expect substantive response.
- b. A Three page "Review by Zane Spiegel, August 19, 2003 of ' Evaluation of CMSR for MDA-H SWMU 54-004, at TA-54' by George Rice, August 7, 2003". This written review strongly supported the Rice evaluation of inadequate treatment by the CMSR of both vertical and lateral fracture flows, as did his oral comments following the Rice presentation.

However, Spiegel's oral comments to Focus Group also emphasized that absence of Rice's written comment on total vertical recharge (Fractured flow plus matrix flow) was probably due to the absence of any useful information on the topic on the CMSR, or most importantly, the matrix flow itself, and the effects on both vertical and lateral flow to be expected, on the basis of important wet periods known from numerous long-term

meteorological records. These items should have been addressed in great detail by both CMSR and Rice, as the CMSR, by omission, did not tell the whole truth, therefore lied.

2. Regarding the third paragraph of page 2 and second item on page 3, Paul Davis's "...offer to meet with Zane (and presumably with John and other LANL staff) to resolve difference... was rebuffed..." was not an accurate characterization of my response. The truth is as follows:

I pointed out, as in my memo to the Focus Group dated 030816, and in my August 19 Review of the Rice Report, that for three years I had been providing pro bono and written documentation to LANL staff concerning their neglect of standard scientific procedure in all their recharge investigation and in a major ground water modeling project. ("the worst I have seen in fifty years of professional editing"). And they did not have the grace or professional ethics to acknowledge my comments or discuss them with me at any time nor in their recent report. **It is absurd to think that I am Stupid enough to meet again, on my own time and expense, with LANL staff and paid consultants who did not have the common courtesy and professional ethics standards to address my repeated and well-documented oral /written suggestion during the past three years, especially since these contributions were made on the basis of unparalleled professional knowledge gained by in-service training (beginning with field work in the area and related areas since 1949), plus world wide expertise on ground water recharge processes and data applicable to the LANL waste sites.**

Therefore, I believe that now is the time for the authors of the CMSR to fulfill their responsibility to their profession; the Government for which they work; the taxpayer who pay their salaries, benefits, and expenses; and to the Pueblos and other communities and rural residents that are at risk for LANL's irresponsibility, by responding to my afore mentioned education efforts, in writing, in great detail, and with full documents of all contrary views, if any.

This should be done on their time and expense. At some convenient weekend in the immediate future, with copies for each member of the focus group, prior to the proposed on October 9<sup>th</sup>. If this is not done voluntarily, I will seek alternative ways of getting a comprehensive response to the public focus comprehensive response to the public, plus appropriate apologies to all members of the Focus Group and Southwest Marketing for wasting their time and expense.

---

Zane Spiegel, Owner, ZSI  
Professor, Ground- Water Hydrology  
P.O. Box 8527, Santa Fe NM 87504-8527 USA

# Hispano Round Table of New Mexico

Post Office Box 27217  
Albuquerque, NM 87125

<http://hrtnm.org>

August 19, 2003

## Member Organizations

AFL-CIO  
AFSCME  
Alburq. Founders Day  
Albuquerque Partnership  
American GI Forum  
APS Hispano Educators  
Barelas CDC  
Central Labor Council  
Centro Cultural de NM  
CL ER  
COPA  
De Colores  
El Centro de la Raza  
Forest Service HEA  
HRT of Las Vegas  
HRT of Santa Fe  
Hispano Chamber of  
Commerce del Norte  
Hispanics for UNM  
Hispanic Women's  
Council  
Homesteaders Assn. of  
the Pajarito Plateau  
IMAGE  
La LUCHA  
LLAVE  
LULAC  
MANA  
MeCHA  
Mexican American  
Engineer and Scientists  
Minority Women's  
Coalition  
MISSION  
NEA Bernalillo  
N.M. Hispanic Bar Assn.  
N.M. Hispanic Council  
on Aging  
N.M. Hispanic State  
Employees Assn.  
N.M. Hispanic Social  
Workers Association  
Partido de la Raza Unida  
P.B. Incorporated  
Plumber & Steam  
Fitters #412  
Project Uplift  
Raza en Accion  
UPTE/CWA-Local 1663

Mr. Ron Archuleta, DOE-IG  
Los Alamos, New Mexico 87545

The Hispanic Round Table of Mexico (HRT), a consortium of 40 member organizations representing over 36,000 individuals, charges the Los Alamos National Laboratory with fraud, waste and abuse of federal resource; with the explicit or otherwise implicit support of the University of California. Specifically, the HRT charges that LANL, at least since the late 1970's, has engaged in the purposeful obstruction of access to public information that would show the extent of employment bias within LANL, and the institutionally sanctioned distortion of such information for purposes of covering up institutional-wide and otherwise long-standing/chronic violations of equal protections mandated by State and Federal Civil Rights, Labor, and Whistleblower Protection laws. As evidence of this the HRT recommends that the DOE-IG obtain a copy of a U.S. Department of Labor Office of Federal Contract Compliance Report, issued in the late 70s after a 5 year struggle (by the OFCCP) to obtain such information from LANL. This report was later used, in a U.S. House of Representative Committee Investigation, conducted in the early 1980's, in which LANL/UC was cited throughout the lengthy report (LANL being the associated case study) for wasting over \$10 million in taxpayer dollars resisting DOL-OFCCP enforcement of EEO/AA mandates. A copy of both the DOL-OFCCP report and the U.S. House Investigation report can be obtained from the Albuquerque Office of the DOL-OFCCP.

As further evidence of LANL's ongoing efforts to cover up gross and systemic violations of civil and labor rights laws is the 1996 DOL-OFCCP report finding that LANL conducted the 1995 Reduction in Force in a manner that disproportionately resulted in the adverse impact (i.e. systemic bias) of Hispanics. Again, a copy of this report can be obtained from the Albuquerque Office of the DOL-OFCCP.

The most recent example of this ongoing effort by Lab leadership to cover up workplace disparities is the so-called Welch Consulting report—released on August 18, 2003 to a legislative committee of the State of New Mexico...and soon to be released to a federal legislative committee in Washington, DC. This report was supposed to be a parity and glass ceiling analysis commissioned by LANL, which the HRT contends was purposely distorted through the introduction of numerous moderating factors, ostensibly interjected for purposes of ensuring only "relevant experience" was considered, though having the effect (and this being much more likely the intent) of dramatically skewing downwards the level of disparity reflected by said analysis. This is the effect of what was done and, intentional or not—disparity was grossly underestimated and therefore the associated conclusions/results were blatantly misleading.

As stated, the results/conclusions stemming from the so-called Welch analysis, even though known to be grossly misleading at best, were presented to a State of New Mexico legislative committee as being factual on August 18, 2003. Those results, we firmly believe, do not even remotely depict the true extent of the disparity existing within LANL (according to a separate parity analysis done and made public well over a year ago by the HRT). On the contrary, the LANL-commissioned Welch analysis as done, not only does not constitute acceptable practice under the U.S. DOL-OFCCP guidelines, it would even fail to qualify as a valid glass-ceiling/parity analysis under U.S. Department of Equal Employment Opportunity auspices. Given this, the Welch analysis can only be construed as being part of a long-standing/concerted effort, by LANL/UC, to cover up the true extent of pay and promotion disparity within LANL and therefore, purposely mislead elected officials and the general public

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from contracting with, for, and/or on behalf of the U.S. government, including managing the Los Alamos National Laboratory. And that the evidence of such compliance should be a comprehensive parity analysis, open to public scrutiny/validation, done by the OFCCP to ensure that this in fact is the case, and not just an assertion made without independent validation. This is vital, that the selection committee have this "evidence" in front of it BEFORE making the selection decision.

Last but not least, the timing and appropriateness of this request is evident given the University of California's failure, over the past 60 years, to instill at LANL the type of behavior that could have long ago eliminated the type of personnel management inequities and abuses that are now much more the rule than the exception at LANL.

Thank you for your attention to this matter.

Charles "Chuck" M. Montañño, Chair  
Hispano Round Table of New Mexico  
(505) 470-4273

cc: Honorable Spencer Abraham, Secretary  
U.S. Department of Energy  
U.S. Representative W.J. "Billy" Tauzin, Chair  
House Energy & Commerce Committee  
  
U.S. Senator Pete V. Domenici, Chair  
Energy & Natural Resources Committee  
  
U.S. Senator Jeff Bingaman, Ranking Member  
Energy & Natural Resources Committee  
  
U.S. Representative J. Greenwood, Chair  
Subcommittee on Oversight & Investigations  
  
U.S. Representative Tom Udall, NM 3<sup>rd</sup> Congressional District  
  
Francis S. Blake, Chair  
Blue Ribbon Commission on Use of Competitive Procedures



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Forest Service HEA  
HRT of Las Vegas  
HRT of Santa Fe  
Hispano Chamber of  
Commerce del Norte  
Hispanics for UNM  
Hispanic Women's  
Council  
Homesteaders Assn. of  
the Pajarito Plateau  
IMAGE  
La LUCHA  
LLAVE  
LULAC  
MANA  
MeCHA  
Mexican American  
Engineer and Scientists  
Minority Women's  
Coalition  
MISSION  
NEA Bernalillo  
N.M. Hispanic Bar Assn.  
N.M. Hispanic Council  
on Aging  
N.M. Hispanic State  
Employees Assn.  
N.M. Hispanic Social  
Workers Association  
Partido de la Raza Unida  
P.B. Incorporated  
Plumber & Steam

August 19, 2003

Ambassador Linton Brooks, Administrator  
National Nuclear Security Administration

Subject: RFP for the Management Oversight of Los Alamos National Laboratory

Please reference the attached letter to the U.S. Department of Energy Office of Inspector General, Los Alamos, New Mexico office (DOE-OIG). As indicated in this letter the Hispano Round Table of New Mexico (HRT) is deeply concerned with long-standing shortcomings in employment practices at the Los Alamos National Laboratory (LANL). We are particularly concerned that despite the University of California having managed the LANL facility for the past 60 years, there exists a widespread and prevalent pattern and practice of institutionalized resistance at LANL to achieving meaningful compliance with State and Federal laws mandating employment equity and parity. The attached letter, to the DOE-OIG, provides details and references supporting evidence.

With this letter the HRT respectfully requests, given the contract for the management oversight of LANL is to be competed for the first time in history, that none of the competing entities be selected for said contract unless they provide, in advance of the selection decision, convincing and compelling evidence that there exists no disparity in salary and promotion opportunities within their organization, thus demonstrating their commitment and ability to eliminate the long-standing pay and promotion disparity that has always existed at LANL, and has gotten progressively worse over time. This is a very important issue for the stakeholder community of New Mexico, including members of our congressional delegation and all three branches of our State government. This is so simply because it has been a headline concern in New Mexico for much of the Lab's history (and currently as you can see by the attached letter), and we would dearly prefer it not continue to be a bitter ongoing bone-of-contention into the future. But we also believe this badly needed adjustment in Lab culture will only occur if the RFP itself (for managing LANL) mandates that the rampant employment bias of the past (and present) is no longer acceptable now as we look to the Lab's future. A similar point was made by the way, in March 1996, in an official meeting I and three others had with then DOE-Deputy Secretary Charles Curtis. At that time the DOE was deciding whether to extend the contract for the oversight of LANL to the University of California another five years, and if so what modifications might be made to the related Prime Contract. None of the modifications we recommended, which would have instilled greater accountability at LANL and otherwise circumvent many of problems that have surfaced at LANL since, were ever adopted.

In summary, we respectfully request that the RFP for the management oversight of LANL mandate full compliance with U.S. Department of Labor Office of Federal Contract Compliance Program (OFCCP) rules and regulations, including related AA/EEO requirements, and that any contractor (including M&O contractors) unable, unwilling or otherwise resistant to such requirement be barred

# Hispano Round Tab' of New Mexico

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For the DOE to establish the veracity of our claims, the HRT respectfully advises the DOE-OIG obtain the information referenced above to determine whether there does exist a pattern of wasteful, if not outright fraudulent spending (by LANL/UC) that has effectively served to blunt any credible enforcement of the laws mentioned above, and if so then render any and all costs associated with this historic and longstanding effort by LANL/UC to resist enforcement of State and Federal equity and equal opportunity laws unallowable. You should also obtain a copy of the Lab's own "Workplace Environment Survey" done a couple of years back, and last but not least, the DOE should obtain a copy of the April 2002 GAO report (Report GAO-02-391) that corroborates our contention, as a stakeholder organization, that the pay and promotion disparity existing at LANL is far greater than what LANL is now falsely attempting to assert, through the Welch analysis, and that the Welch analysis itself is unprecedented as to the extent that it went to blatantly distort, misuse and mislead. In other words the Welch Consulting firm analysis at best represents a gross misuse and abuse of taxpayer resources, at best is a blatantly fraudulent effort (by LANL/UC) to misleading elected officials and the general public. In either case, the associated cost should be considered unallowable. It is important to emphasize at this juncture that the issue is not just the allowability of the associated cost, but purposeful distortion and misleading of elected officials.

So that you are also aware, the HRT is requesting (separately)...

- ...that the U.S. DOL-OFCCP conduct a parity analysis in accordance with a parity analysis done by the HRT and made public about a year ago, but instead using the raw data LANL utilized in conducting the so-called Welch analysis;
- ...that the U.S. DOL-OFCCP determine whether the numerous so-called "relevant experience" moderating factors applied in the so-called Welch "model," effectively caused the resulting disparity calculations to be systematically skewed towards immateriality and/or otherwise made the disparity appear systematically less significant than it otherwise would have appeared had such "modifiers" not been applied;
- ...that the U.S. DOE/National Nuclear Security Administration require the University of California, and any other potential bidders for all or any portion of the LANL contract, be certified by the U.S. DOL-OFCCP (before being awarded the LANL contract) as to not only being in full compliance with AA/EEO laws, but also that the basis for such certification be the U.S. DOL-OFCCP completing a comprehensive (and current) glass-ceiling/parity analysis of the institution that shows no bias or inequity whatsoever.

Last but not least, as an employee of the University of California at LANL, I hereby formally request whistleblower protection status under the whistleblower protection program of the U.S. Department of Energy. It is my belief, based on personal past experience, that it is highly probable I will be subject to retaliation for having signed this letter as chair of the Hispano Round Table of New Mexico. It is furthermore my contention that significant pay disparity already exists in my own personal case, despite a previous DOE whistleblower determination in my favor, and a related 1999 settlement in which LANL agreed in writing (as part of the settlement agreement) to end any and all retaliation directed at me. Unfortunately however, this is a commitment the Lab has yet to meet.

Please advice.

Charles M. Montañño, Chair  
Hispano Round Table of New Mexico

Los Alamos POWS  
Project on Worker Safety  
P.O. Box 2791  
Española, NM 87532

Statement at the New Mexico State Legislature

July 11, 2003

My name is Ken Silver. I am a co-founder and consultant to the Los Alamos Project on Worker Safety (Los Alamos POWS), a project of labor and community environmental health organizations. Our goal is to win compensation and recognition for occupational illnesses among former LANL employees and their survivors.

In the summer of 2000 Congress passed, and in October of 2000 President Clinton signed, the Energy Employees Occupational Illness Compensation Program Act. Many of the people and organizations here today were instrumental in campaigning for passage of this landmark legislation. And several of the legislators on this committee were instrumental in passage of House Joint Memorial 16 in the recent session of the legislature. It calls for reforms in the federal program to meet the needs of families in New Mexico. Thank you very much for your support.

A recurring theme throughout the public meetings and Congressional hearings leading to passage of the Act was inadequate access to information. Former LANL employees with recognized or suspected occupational illnesses, and their widows or family members, repeatedly voiced frustration over the University of California's lack of cooperation when it comes to accessing exposure and medical records. These problems continue today.

I've worked on LANL health and historical concerns for nine years, in part to complete a doctorate in environmental health sciences from a major research university. In addition to documenting many of the occupational and environmental health concerns of affected families, I have as a scholar experienced first hand many of the same frustrations as New Mexico families in accessing LANL historical information.

At the conclusion of my remarks I will warn you about something I call the "Saigon scenario," which may lie ahead.

A few case examples highlight the problem:

- Case #1. In the early 1990's the widow of a LANL radiation worker who died of leukemia complained to the Commissioner of the New Mexico Department of Health that she had been told by Lab officials that her late husband's medical records would not be provided to her because they were supposedly "classified." More than five years later Commissioner Burkhardt was still deeply troubled by the state's inability to intervene on her behalf.
- Case #2. In the 1970's, former Manhattan Project machinist [REDACTED] was pressing his claim for state workers' compensation for beryllium disease acquired at LANL. [REDACTED] attorney had to enlist the services of the Bernalillo County Sheriff's Office in order to obtain chest x-ray films of [REDACTED] taken years earlier by LANL's medical unit.
- Case #3. In April 1995 the federal Department of Energy and the Department of Health and Human Services published a Federal Register notice stating, in part, that universities with HHS funds to conduct health-related research at DOE facilities would enjoy privileges of access to contractor records. That very month, on my second site visit to LANL, funded by an HHS cooperative agreement with Boston University, I requested access to 1.5 linear feet of records pertaining to the Bayo Canyon implosion experiments in the 1950's. These experiments resulted in the release of radioactive isotopes into the environment of northern New Mexico, especially over the Indian Pueblos that border the Lab. The University of California's director of the LANL Archives allowed us to view about 4 of the 18 linear inches requested. He told us we would have to request the rest under the Freedom of Information Act -- the HHS Federal Register notice notwithstanding.

suggested, and therefore provided to me under FOIA. This is perhaps the most farcical example of how far the government and contractors can go in barring public access to historical records.

The “ownership” ruse really bothered me, because just a month earlier at the December 1996 meeting of the American Public Health Association meeting in New York, I had asked U.S. Energy Secretary Hazel O’Leary about contractors hiding behind the legal concept of “ownership” of records under FOIA. In her characteristically forceful style, Secretary O’Leary emphatically insisted that contractors could not claim ownership of historical records related to health and environmental concerns, because most of those records were created in response to federal reporting and compliance requirements. They were bona fide records of the federal government. In a follow-up conversation, Assistant Secretary of Energy for Environment, Safety and Health, Dr. Tara O’Toole, told me that DOE attorneys had been involved in protracted negotiations with UC lawyers at LANL over records ownership issues – negotiations that we now know were not concluded before Secretary O’Leary and Dr. O’Toole left office.

- Case #6. A very recent case example. In February 1999, the Centers for Disease Control embarked on the first phase of an environmental radiation dose reconstruction study of LANL, the documents discovery process. CDC has successfully completed such projects at Hanford, Savannah River, Oak Ridge, Fernald and the Marshall Islands, looking at public exposures to radioactive materials and toxic chemicals released off-site during the eras of the Cold War and the Manhattan Project. New Mexico advocates from the Indian Pueblos and rural communities downwind of LANL first called for a dose reconstruction study in the early 1990’s. Despite their high-level security clearances, at every step of the process, CDC and its contractors have experienced untoward delays and unreasonable barriers to accessing LANL records facilities. At a public meeting on Wednesday night, CDC reported that they’re running out of time and money, and their Memorandum of Understanding with DOE is about to expire. CDC’s contractor has obtained and released

a lot of important documents, but they haven't even started in the LANL Archives, due to access barriers. One of the most interesting lines of inquiry that CDC's contractor has pursued is starting to confirm that emissions of plutonium into the air during the early years of operation may have been hundreds of times greater than the amount officially reported by the Lab and the federal government.

One further illustrative anecdote: At a public meeting on the CDC project in 1999, I was standing just a few feet away when LANL's Director of Environment, Safety and Health threatened the contractor's principal scientist (██████████) with these words: "If anything gets out that isn't supposed to, we're going to come after you." The remarks of LANL's representative are emblematic of the problem. On the one hand, he might claim that he was referring to information related to national security. But if so, it would be the responsibility of the federal government – not the University of California – to "go after" ██████████; that is, to prosecute the violation of procedures needed to protect national security. Anyone who has dealt with LANL over these issues knows what the LANL representative's remarks fit squarely in the tradition of LANL arrogantly abusing its political power – even descending to threats and intimidation – to control information and thwart those scientists, agencies and organizations who would dare to take an independent look at these issues.

For these reasons, the EEOICPA Act which Los Alamos POWS is working to implement, established clear inter-agency procedures for DOE contractors to provide exposure and medical records for the purposes of determining the compensability of illnesses. So how is LANL doing? The most recent statistics posted on the web site of the National Institute for Occupational Safety and Health (NIOSH), which has responsibility for reconstructing the radiation doses of cancer claimants, show that the Los Alamos Area Office has the third worst record in the DOE complex when it comes to the timeliness of their responses to requests for records.

Everyone in New Mexico, California, the nation and much of the world knows the role of Los Alamos on the global stage during the Manhattan Project of World War II. But what

people in New Mexico know --which folks in California need to learn -- are the local impacts of Los Alamos on workers, families and communities here. Knowledge is power. Because LANL so tightly controls information about past worker and community exposures, they've got almost all the power on these issues. Many former workers continue to go to their graves without ever receiving an independent determination as to whether their illnesses were work-related. Many more who have been diagnosed with occupational illnesses are having their compensation claims delayed in part because of the University of California's poor cooperation with requests for records by agencies tasked with implementing the federal compensation law.

I can't foresee the future. But if the UC loses the contract to run LANL, what is going to happen to all the important health-related records in the LANL Archives? As legislators with some degree of oversight power, I urge you to be on guard for the "Saigon scenario." If the contract changes hands, please be on guard in the waning days for the ordering of paper shredders, the destruction of documents, or (more likely) a step-up in the shell game of removal of documents to off-site locations protected by attorney-client privilege.

This "Saigon scenario "would be entirely consistent with the 60+ year pattern of arrogance, public harm and lack of accountability with which the University of California has comported itself in northern New Mexico.

Ken Silver, DSc, SM  
